

² 5 U.S.C. § 8101 *et seq.*

(2) OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits on November 25, 2015; and (3) appellant met his burden of proof to establish that he had any continuing employment-related disability or condition after November 25, 2015.

FACTUAL HISTORY

On March 19, 2015 appellant, then a 43-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that wearing a shoulder bag to deliver mail caused neck and right arm pain and numbness. He first became aware of the condition on June 30, 2014, and its relationship to employment on March 18, 2015. The employing establishment indicated that, due to a prior injury that occurred on February 25, 2005, adjudicated by OWCP under File No. xxxxxx562 and accepted for thoracic strain, appellant had worked modified duty until February 27, 2015. It also indicated that he was taken off work by his physician on March 2, 2015 for the instant claim, adjudicated under File No. xxxxxx907, and on March 18, 2015 for File No. xxxxxx562. The employing establishment indicated that appellant had also filed a recurrence claim (Form CA-2a) under File No. xxxxxx562.³

In an undated statement appellant indicated that on April 26, 2013 he began to carry a shoulder satchel at work when he previously used a mail cart. He related that beginning about June 30, 2013 he began having pain in his back, neck, and right arm which increased overtime and caused loss of strength in his right hand, resulting in being off work as of February 27, 2015. Appellant maintained that carrying the mail satchel aggravated his already injured back and put a strain on his neck, which caused neck and arm pain.

In treatment notes dated June 20, 2013 to March 16, 2015, Dr. J. David Lynch, a Board-certified physiatrist, noted appellant's complaints of midback, neck, and right arm pain and numbness. He described examination findings and diagnosed thoracic strain, cervical strain, myofascial pain, and possible disc problem. Dr. Lynch advised that appellant could continue modified duty until March 2, 2015 when he noted that appellant's pain was worse. Musculoskeletal examination elicited no tenderness to palpation and normal range of motion. Dr. Lynch indicated that appellant had a new neck injury and advised that he could not work. In a March 18, 2015 attending physician's report (Form CA-20), Dr. Lynch noted appellant's continued neck and right arm complaints. He checked a box marked "yes" on a form report indicating that the condition was work related, and advised that appellant could not work. In April 4, 2015 correspondence, Dr. Lynch related that appellant was being seen for a chronic thoracic spine injury that occurred in the past. He indicated that in June 2013 appellant reported having neck pain which he felt was caused by the use of a shoulder satchel every day at work and this aggravated his neck causing persistent and worsening problems. Dr. Lynch suggested a cervical magnetic resonance imaging (MRI) scan and opined that it appeared that carrying the satchel injured appellant's neck and, at a minimum, caused a cervical strain.

On May 7, 2015 OWCP accepted the condition of neck sprain.

³ File No. xxxxxx562 is not presently before the Board.

Dr. Lynch continued to submit treatment notes in which he noted appellant's complaints, described physical examination findings, and reiterated his diagnoses. He continued to advise that appellant could not work.

On June 15, 2015 appellant filed a recurrence claim (Form CA-2a) of the accepted neck sprain that occurred on February 25, 2015, for which he stopped work on February 27, 2015. In an attached statement he noted that beginning April 26, 2013 he had to use a shoulder satchel that weighed between 10 and 35 pounds, and on February 25, 2015 this caused neck strain and increased pain, numbness, and tingling radiating down his right arm, which continued. Appellant related that the pain kept him from sleeping and nothing had made the pain better. He advised that he had not worked since February 27, 2015 due to both injuries, the present claim and File No. xxxxxx562.

By decision dated June 29, 2015, OWCP denied appellant's claim for a recurrence of disability due to the accepted neck sprain as the medical evidence of record failed to support a work stoppage. Appellant, through counsel, timely requested a hearing with a representative of OWCP's Branch of Hearings and Review.

Dr. Lynch submitted additional treatment notes dated June 1 to 29, 2015 in which he reiterated his findings and conclusions. He advised that appellant remained totally disabled. A July 15, 2015 cervical spine MRI scan demonstrated mild degenerative changes without high-grade stenosis. On July 20, 2015 Dr. Lynch noted the MRI scan findings and diagnosed cervical strain and right arm pain. He advised that appellant could not return to work until he had an electrodiagnostic (EMG) and nerve conduction velocity (NCV) study of the right arm. In an August 14, 2015 treatment note, Dr. Lynch noted that a right upper extremity EMG/NCV was normal. On August 19, 2015 he noted that appellant was to begin physical therapy for his neck. Dr. Lynch continued to advise that appellant could not work.

In August 2015, OWCP referred appellant to Dr. P. Kent Thrush, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a September 3, 2015 report, Dr. Thrush reviewed the statement of accepted facts, noted the accepted condition and appellant's prior thoracic strain, and recorded his current complaints. Appellant noted that his numbness was improving with physical therapy. Dr. Thrush described his review of the medical evidence including the normal EMG/NCV test result. He noted that a cervical MRI scan showed a mild disc bulge at C5-6 on the left with no significant nerve root impingement, opining that this was contradictory to a complaint of right arm pain and was consistent with appellant's age. Examination demonstrated normal range of motion of the cervical, thoracic, and lumbar spines, and in the shoulders, elbows, and wrists bilaterally. Sensation in the median, ulnar, and radial nerve distributions in both arms was normal. There was tenderness to palpation in the lower cervical and upper thoracic spine with no muscle spasm present. Tinel's signs were negative at the wrist and elbow bilaterally. Dr. Thrush opined that appellant was not objectively partially or totally disabled from work. He found no objective evidence that appellant continued to have a cervical sprain, advising that his neck pain was due to the underlying early degenerative disc disease of the cervical spine and that the etiology of the right arm pain was unexplained, in light of the normal EMG/NCV. Dr. Thrush indicated that appellant's subjective complaints of cervical pain were related to the early degenerative disc disease, which would not be objectively disabling and would not prevent him from returning to full-duty employment. He noted that,

although he did not review appellant's official job description, appellant reported a lifting requirement of 50 to 75 pounds which, the physician believed, he was capable of performing. Dr. Thrush concluded that appellant was objectively capable of performing the job of mail carrier. In an attached work capacity evaluation (Form 5c), he advised that appellant could work eight hours daily with no restrictions for cervical sprain.

On September 25, 2015 Dr. Lynch advised that appellant could return to work with a lifting restriction of 35 pounds and that he should use a mail cart.

On September 29, 2015 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits. It found that the weight of the medical opinion evidence rested with Dr. Thrush who advised that the employment-related neck sprain had resolved without residuals.

In reports received by OWCP in October 2015,⁴ Dr. Lynch reported his treatment of appellant since December 12, 2012 for a chronic thoracic spine injury that occurred in February 2005, File No. xxxxxx562 and advised that appellant had a permanent 35-pound weight restriction and was restricted to use of a mail cart. He indicated that appellant reported that he had to begin using a shoulder satchel on April 23, 2013, and it was only after that time that he began to experience cervical pain and right arm pain and numbness. Dr. Lynch opined that the use of the shoulder bag was consistent with appellant's injury of a mild disc bulge at C5-6 superimposed over a left disc herniation. He reported that he took appellant off work in February 2015 when his condition became unmanageable due to pain. Dr. Lynch concluded that the use of the mail satchel caused appellant's thoracic spine injury (File No. xxxxxx562) to increase in pain and spasms, and caused the new cervical spine injury (File No. xxxxxx907) to worsen, causing strain and bulging disc/herniation. In correspondence dated November 6, 2015, counsel requested that the instant claim be expanded to include thoracic strain, back spasm, cervicgia, radiculopathy, and herniated cervical disc.

On November 25, 2015 OWCP terminated appellant's wage-loss compensation and medical benefits, effective that day. It found that the weight of the medical evidence rested with the opinion of Dr. Thrush.

Appellant, through counsel, timely requested a hearing before a representative of OWCP's Branch of Hearings and Review of the November 25, 2015 decision. In reports dated August 14 and September 23, 2015, received by OWCP in December 2015 and February 2016, Dr. Lynch described physical examination findings and diagnosed cervical strain.

At the hearing, held on February 29, 2016 regarding both the June 29, 2015 recurrence denial and November 15, 2015 termination decision, counsel argued that additional conditions should be accepted. Appellant testified that he stopped work in February 2015 due to pain caused by carrying a mail satchel. He indicated that he had returned to work on October 10, 2015 and uses a mail cart.

⁴ One of his reports, received by OWCP on October 5, 2015, was undated. The second report was dated October 21, 2015 and was received by OWCP on October 29, 2015.

In an April 5, 2016 decision, an OWCP hearing representative found that the weight of the medical evidence rested with Dr. Thrush and affirmed the June 29 and November 15, 2015 OWCP decisions. He did not address whether additional conditions should be accepted.

LEGAL PRECEDENT -- ISSUE 1

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.⁵ Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.⁶

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁸ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant failed to meet his burden of proof to establish that he was totally disabled beginning February 27, 2015 due to the accepted neck sprain. The Board notes that, although he filed a recurrence claim for work stoppage on February 27, 2015, the issue is not whether he sustained “recurrence” of disability due to an accepted injury, but whether he was disabled due to the accepted neck sprain from the date he stopped work such that he was entitled to wage-loss compensation.¹⁰

The record indicates that appellant has a claim for a February 25, 2005 employment injury, adjudicated under File No. xxxxxx562, accepted for a thoracic strain. Under that claim

⁵ See 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁶ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ Section 10.5(x) of OWCP’s regulations provides that a recurrence of disability means an inability to work, caused by a spontaneous change in an accepted medical condition, not a new condition. 20 C.F.R. § 10.5(x).

he was working modified duty when he stopped work on February 27, 2015. Appellant returned to modified duty on October 10, 2015.

The evaluation of medical evidence includes the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion. The opinion of a physician must be of reasonable medical certainty and must be supported by medical rationale explaining causal relationship.¹¹ Medical evidence submitted by a claimant to support his or her claim for compensation benefits should reflect a correct history, and the physician should offer a medically sound explanation of how the specific duties appellant performed caused or aggravated the claimed condition.¹²

The medical evidence relevant to the claimed disability includes numerous reports from Dr. Lynch, an attending physiatrist, who advised beginning in June 2013 that appellant complaint of neck and right arm pain. On March 2, 2015 he took appellant off work, noting a new neck injury. However, in that same report, Dr. Lynch noted no tenderness to palpation and normal range of motion on musculoskeletal examination. He continued to advise that appellant was totally disabled until September 25, 2015 when he reported that appellant could return to duty with the restrictions in place under File No. xxxxxx562, accepted for thoracic strain.

The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.¹³ The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.¹⁴ The Board finds that the medical evidence of record is insufficient to establish that appellant was totally disabled for the claimed period. Dr. Lynch did not explain with sufficient rationale why appellant could not perform his modified duties beginning February 27, 2015 due to the accepted neck sprain under the present claim.¹⁵ Rather, he noted that the restrictions provided were due to the accepted thoracic sprain, adjudicated under File No. xxxxxx562.

The Board has long held that to support causal relationship, the opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹⁶ The test of "disability" under FECA is whether an employment-

¹¹ *K.W.*, 59 ECAB 271 (2007).

¹² *See T.G.*, Docket No. 14-0751 (issued October 20, 2014).

¹³ *Sandra Pruitt*, 57 ECAB 126 (2005).

¹⁴ *See Albert C. Brown*, 52 ECAB 152 (2000).

¹⁵ *See S.B.*, Docket No. 13-1162 (issued December 12, 2013).

¹⁶ *Supra* note 8.

related impairment prevents the employee from engaging in the kind of work he or she was doing when injured.¹⁷ The Board finds that Dr. Lynch's opinion is insufficient to establish that appellant was disabled for any period due to the accepted neck sprain.

As appellant did not submit sufficient medical evidence to establish that he was totally disabled beginning February 27, 2015 causally related to the accepted neck sprain, he did not meet his burden of proof.¹⁸

LEGAL PRECEDENT -- ISSUE 2

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.¹⁹ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.²⁰

ANALYSIS -- ISSUE 2

OWCP accepted appellant's claim for neck sprain. It terminated his wage-loss compensation and medical benefits on November 25, 2015, based on the opinion of Dr. Thrush, an OWCP referral physician.

The medical evidence relevant to the November 25, 2015 termination included Dr. Thrush's September 3, 2015 report. Dr. Thrush reviewed appellant's history and current status. He indicated that, although the cervical MRI scan demonstrated a mild disc bulge at C5-6 on the left with no significant nerve root impingement, this was contradictory to appellant's complaint of right arm pain and was consistent with his age. Dr. Thrush's findings included normal range of motion throughout the spine and both arms as well as normal sensation in both arms. Although there was tenderness to palpation in the lower cervical and upper thoracic spine, muscle spasm was not present. Dr. Thrush found no objective evidence of a current cervical sprain and advised that appellant's neck pain was due to the underlying early degenerative disc disease of the cervical spine. He opined that the etiology of the right arm pain was unexplained, in light of the normal EMG/NCV study. Dr. Thrush advised that appellant's complaints were not work related, but were secondary to his age-related degenerative disc disease, and that the results of the accepted neck sprain were no longer present and that he could return to full duty as a mail carrier. In an accompanying work capacity evaluation, he advised that appellant could work eight hours daily with no restrictions for cervical sprain. The Board finds that Dr. Lynch failed

¹⁷ *Corlisia Sims*, 46 ECAB 963 (1995).

¹⁸ *Mary A. Ceglia*, 55 ECAB 626 (2004). The Board's decision does not preclude appellant from pursuing matters pertaining to File No. xxxxxx562 with OWCP.

¹⁹ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

²⁰ *Id.*

to provide a rationale medical opinion as to causation as his only reasoning is that the condition developed in proximity to the act of carrying a satchel over appellant's shoulder.

In reports received by OWCP in October 2015, Dr. Lynch discussed appellant's thoracic strain, adjudicated under File No. xxxxxx562. Regarding the instant claim, he noted appellant's report that he had to begin using a shoulder satchel on April 23, 2013, and it was only after that time that he began to experience cervical pain and right arm pain and numbness. Dr. Lynch opined that the use of the shoulder bag was consistent with appellant's injury of a mild disc bulge at C5-6 superimposed over a left disc herniation. He reported that he took appellant off work in February 2015 when his condition became unmanageable due to pain. Dr. Lynch concluded that the use of the mail satchel caused both appellant's thoracic and cervical spine injuries.

The Board finds that OWCP properly relied on Dr. Thrush's opinion in terminating appellant's wage-loss compensation and medical benefits on November 25, 2015. A disc bulge and/or disc herniation have not been accepted. Dr. Thrush had full knowledge of the relevant facts, and his opinion was based on proper factual and medical history. He described examination findings. At the time benefits were terminated, Dr. Thrush found no basis on which to attribute any residuals or continued disability to appellant's accepted neck sprain. His opinion is found to be probative evidence and reliable, and sufficient to justify OWCP's termination of benefits for the accepted condition.²¹

OWCP therefore met its burden of proof to terminate appellant's wage-loss compensation and medical benefits on November 25, 2015.²²

LEGAL PRECEDENT -- ISSUE 3

As OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits on November 25, 2015, the burden shifted to him to establish that he had disability causally related to the accepted neck sprain.²³ Causal relationship is a medical issue. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.²⁴

²¹ See *Michael S. Mina*, 57 ECAB 379 (2006) (the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

²² *Supra* note 19.

²³ See *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

²⁴ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

ANALYSIS -- ISSUE 3

The Board finds that appellant did not establish that he had continuing residuals or disability relating to the accepted neck sprain after November 25, 2015.

Subsequent to the termination appellant submitted treatment notes from Dr. Lynch dated August 14 and September 23, 2015 in which the physician merely described physical examination findings and diagnosed cervical strain. As these predated the termination of benefits on November 25, 2015, they are of limited probative value regarding a period of disability thereafter. Thus, there is no medical evidence of record of sufficient rationale to establish that appellant had continuing disability or residuals after November 25, 2015 due to the accepted neck sprain. He therefore did not meet his burden of proof.²⁵

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he was totally disabled on or after February 27, 2015 due to the accepted neck sprain. The Board further finds that OWCP met its burden of proof to terminate his wage-loss compensation and medical benefits on November 25, 2015, and that, thereafter, he did not meet his burden of proof to establish that he had a continuing employment-related condition or disability.

²⁵ The Board notes that OWCP has not issued a decision regarding whether additional conditions should be accepted under this claim. The Board's jurisdiction is limited to reviewing final adverse decisions of OWCP issued under FECA. 20 C.F.R. §§ 501.2(c) and 501.3(a); *see J.B.*, Docket No. 09-2191 (issued May 14, 2010).

ORDER

IT IS HEREBY ORDERED THAT the April 5, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 21, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board